Mad. E-27—30,010—19-11-43.

Revenue (1944) Department.

Ms SERIES.

G.O. No. 1094,

Dated 29th May 1944

[Despatch Abstract.]

Tax - General Sales Tax - (South Kanara) - Udipi - The Canara Industrial and Banking Syndicate Ltd. - Liability to the tax on the sales of goods - Orders passed.

Back papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Further papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Ms	1372	Rev.	20.5.49				

Revenue Department.

The Madras General Sales Tax Act, 1939- (South Kanara) Udipi- The Canara Industrial and Banking Syndicate Ltd. Liability to the tax on sales of goods- Orders requested.

Ref. No.T. 742/44-2.

Madras. 20th April 1944.

From

R. Gallotti Esq., I.C.S.,
Jt. Secretary, Board of Revenue.
Madras.

J.B.Brown Esq., C.S.I., C.I.E., I.C.S., Commr.of Excise, Sop. Rev. & Comml. Taxes.

Read:-

Petition from the Recovery officer of the Canara Industrial and Banking Syndicate Ltd. dated 22nd January 1944.

From the Commercial Tax Officer, South Kanara. Roc. No. 289-44 dated 2nd March 1944.

Reference.

During the year ending 31st March 1943, the Canara Industrial and Banking Syndicate Ltd, Udipi sold pledged jewels for Rs.44-2-0 silver bars for Rs.1,124-10-0 on behalf of Messrs. Devakaran Nanjee Banking Co., Ltd., Bombay for a commission and other goods such as glassware, cutlery stationery etc. which it had taken over from Messrs. N. Venkata sesh Shenoy and Co., of Cochin in satisfaction of claims on the company after giving credit for their invoice value viz. Rs.45,277-7-0. The amount for which the goods so taken over were sold during the year was Rs.49,717-10-9. The Deputy Commercial Tax Officer, South Kanara assessed the Canara Industrial and Banking Syndicate Ltd., to the tax on the sales of all the goods except pledged jewels. In appeal, the Commercial Tax Officer, South Kanara, found that the sales of pledged jewels were also liable to the tax and directed that the assessment be enhanced accordingly. The Board has received a petition from the recovery officer of the Canara Industrial and Banking Syndicate Ltd. for review of the records under section 12 of the Act. The petitioner alleges that the sales of the goods taken over from Messrs. N. Venkatesh Shenoy and Co., were not liable to the tax.

2. With the consent of all persons concerned, the petitioner took over all the goods of Messrs. N. Venkatesh Shenoy and Co., at their invoice value of Rs.45,277-7-0, gave credit for the amount and thereby became their owner. It is said that the petitioner tried without success to sell the goods by auction and then by calling for tenders. Actually the goods were regularly sold from day to day to buyers in the premises of the Bank at Udipi. The accounts showed that sales had taken place on 24th,26th and 27th April 1942, on all the days in May, June, July and August and in the following months. Some goods remained unsold on 1st April 1943. The sales commenced on 27th March 1942 and on 31st March 1943 they amounted to Rs.50,062-3-2 the sales from 27th to 31st March 1943 amounting to Rs.344-8-5. It was admitted that the profit or loss on account of the transactions accrued only to the petitioner.

3. The petitioner had similar transactions also in the year ending 31st March 1942 i.e. sales of pledged jewels, silver bars and other goods but the turnover amounted only to Rs. 2098-2-2.

4. The petitioner contends that as a Banking company incorporated under the Indian Companies Act and governed by the restriction as to business imposed by section 277-F of that Act

the

C.F. 32.

In reply, please quote number, date and short title.*

Revenue DEPARTMENT.

Received _____ *Registered* M 5072

From (Name) G.H. Cooke Esq., I.C.S.,

(Designation) Collector of Vizagapatam

Post Box _____; (STATION) _____ Vizagapatam

Telegraphic Address _____

BOARD OF REVENUE
4 SEP 1937
MADRAS

To

The Secretary to the Board of Revenue

Madras.

Perl *No.* 104-37-D-2, *dated* 1st Sept 1937.

Sir,

ENCLOSURES _____

SPARE COPIES _____

Sub:- Budget Estimates 1938-39

1) 25 General Administration, other Establishments - Establishment for stamping weights and measures,

2) XLVI Mis other, fees, fines and forfeitures - Provincial, Fees for stamping weights and measures.

3) do Miscellaneous sale proceeds of weights and measures.

In the budget estimates read above, the figures for the 5 months of the year 1937-38 (April to August 37) have also to be furnished. According to the revised ---- procedure prescribed by the Accountant General, the District Treasury Account can be prepared only by 10-9-37. I therefore request that the Board may be pleased to give me time until 15-9-37 for the submission of the Budget estimates.

M.N.R. 1/9

For Collector

4/9/1937

1937

the Canara Industrial and Banking Syndicate Ltd., had authority to carry on the business of buying and selling bullion and specie only and in respect of other goods, whether movable or immovable it had authority to buy or sell only in realisation or satisfaction of debts due to it; as such buying or selling was a mode of realisation of the debts due to the bank and was by its very nature casual, it could not be said that the Bank was carrying on the business of buying or selling goods was a dealer as defined in section 2(b) of the Madras General Sales Tax Act. It is urged that the Indian Companies Act did not permit the Bank to function as a dealer so defined. While conceding that the Bank effected transfer of property in the goods in the course of business contemplated in clauses (7) and (8) of section 277 F of the Indian Companies Act, the petitioner states that it did not transfer property in the course of trade or business of buying and selling goods and did not therefore sell within the meaning of section 2(h) of the Madras General Sales Tax Act. It is alleged that for the above reasons the Bank had no turnover liable to tax.

5. Under section 2(b) of the Madras General Sales Tax Act, the transfer of property in the goods need only be in the course of trade or business to constitute a sale. The section does not restrict "business" to "business of buying or selling"

The Bank exhibited the goods and conducted sales over a continuous period of months from day to day. It seems to have functioned as a shop keeper and disposed of the goods in retail over a considerable period. It is possible to hold that such sales were not casual but amounted to a business of selling goods and that the Bank was a dealer with turnover liable to the tax.

Paragraph 2 of G.O. No.2374 Revenue department dated 12th Sentr.1939 deals with the liability of sales of articles held in pledge.

In view of the fact that the arguments for and against the assessment made in this case seem to have force, the Board suggests that legal opinion be taken if necessary and a ruling given.

21.4.44

for Jt. Secretary.

To the Secretary to Government, Revenue Dept.

J.E.G.21.4.

Roll B5 - 333 - 37

Budget estimate of receipts under ~~XXXX~~ XLVI Miscellaneous - Sale proceeds of weights as in East godavari district for 1938-39.

Major Head	Minor Head	Sanctioned estimate for 1936-37	Actuals for 1936-37	Sanctioned estimate for 1937-38	Revised estimate for 1937-38			Budget estimate for 1938-39	Remarks
					Actuals for the first 4 months ending July 37	Probable estimates for the remaining 8 months	Total		
XLVI Miscellaneous	Sale proceeds of weights and measures	Sanction order has not communicated	Rs 0-3-0	nil	nil	nil	nil	nil	

Rajamahendravaram,
Dated 10.8.37

Rajamahendravaram Board
for Collector 10/8/37
East Godavari.

10/8/37 G.O.Ms.No. 931

To

The Secretary to the
Board of Revenue,
Madras

BOARD OF REVENUE
12 AUG 1937
RECEIVED

Revenue Department

Refce. from the Board of Revenue, Ref, No, T.T. 742 /44-2 dated 20-4-44.

G.O.No.Ms. 1094 dated 29.5.44

According to section 277 F of the Indian Companies Act, a banking company is a company which carries on, in addition to its principal business, one or more of the forms of business referred to in clauses (1) to (17) of that section. The sales of glassware, Cutlery, Stationery etc. and of pledged jewels effected by the Canara Industrial and Banking Syndicate Ltd. would fall under clauses (2), (7) and (8) of that section and consequently, these sales cannot be regarded as "casual sales" as contended by the Syndicate. The Syndicate is liable to Sales tax in respect of these sales.

2. As regards the sale of silver bars by the Syndicate, the Syndicate will be eligible for exemption from sales tax in respect of those sales, only if it had obtained a licence under section 5 of the General Sales Tax Act for dealing in bullion and specie.

To the Board of Revenue.

the Collector of Ramnad has provisionally confirmed Sri Uthandarama Pillai as Stationary Sub Magistrate Sattur with retrospective effect from 15-2-38. Under Cl. Rule 11(b) an approved probationer can be appointed to be a full member of a service with retrospective effect from any date, only, if the vacancy exists from such a date previous to the issue of the order of appointment. Accordingly, the Collector's order concedes that the vacancy of the Sub Magistrate exists from 15-2-38. Cl. Rule 11(b) lays down that an approved probationer shall, if a substantive vacancy in the permanent cadre exists, be appointed to be a full member of the service at the earliest possible opportunity. In the face of this mandatory provision the claims of the appellant to the vacancy which exists from 15-2-38 cannot be ignored, as he happens to be the only approved probationer available for confirmation on 15-2-38 ~~between 15-2-38 to 5-6-38~~. If there is any provision in the Statutory Rules that vacancies should be reserved for seniors, then this post can be considered to have remained vacant till June, when the two other probationers completed their probation. In the absence of such directions, the appellants claims to be appointed to be a full member of the service at the earliest possible opportunity, i.e. 15-2-38 cannot be overlooked and the post of the Sub Magistrate cannot be considered to have remained vacant without being filled up substantively, till the other probationers completed their probation. Therefore provisional confirmation of Sri Uthandarama Pillai as Stationary Sub Magistrate, Sattur with retrospective effect from 15-2-38, overlooking the claims of the appellant who was available for confirmation on 15-2-38 is not in accordance with the mandatory provision of Cl. Rule 11(b). If it is contended that this vacancy does not exist from 15-2-38 then also the provisional confirmation of Sri Uthandarama Pillai with retrospective effect from 15-2-38 is illegal.

Rev.Deptt.

Tax-General Sales Tax-(South Kanara)Udipi-The Canara Industrial and Banking Syndicate Ltd-Liability to tax on sales of goods.

Ref. from the Board of Rev.No.T.742/44-2 dated 20-4-44.

To A.S.

Please see the reference from the Bd. of Rev. in the c.f.

2. The point raised by the Board of Rev. is whether it is in order to assess the Canara Industrial and Banking Syndicate under the General Sales Tax Act in respect of the sales of goods taken over by it from another company in realisation of debts due to it. According to the definition under section 2(b) of the G.S.T.Act, a dealer means a person who carries on the business of buying or selling godds. Under Sec.2(h) of the Act, sale means every transfer of the property in goods by one person to another in course of trade or business for cash etc. It is reported that the Syndicate is a Banking company incorporated under the Indian Companies Act and governed by the restriction as to business imposed by section 277-F of that Act. ~~It would therefore appear that buying and selling of goods are not in the normal course of business of the Syndicate.~~ The main argument of the Syndicate for exemption from sales tax is that it did not buy and sell the goods in the course of trade or business. It is ~~also~~ not the intention of the Government to tax casual sales.

From par. 4 of the Board's reference it will be seen that the Syndicate has authority to buy and sell movable and immovable goods in realisation or satisfaction of the debts due to it. Hence it appears that the buying and selling of goods by the Syndicate cannot be said to be casual.. The Syndicate took over all the goods of another company at their invoice value of Rs.45,277-7-0 and the sales up to 31st March 1943 amounted to Rs. 50,062-3-2. It is also reported that some goods remained unsold on 1-4-43. Hence the Syndicate has sold the goods for an amount higher than that for which it took them over. The Syndicate had therefore got a profit also in the transaction. For the reasons stated above and for those mentioned by the Board at 'A' on p.3 c.f., it is for

consideration whether the Syndicate will be ~~considered~~ treated as a dealer in respect of the goods bought and sold by it and the realisation of the debts due to it.

4. The remarks of Finance and Legal may be obtained.

5 Goods such as glassware, cutlery, stationery etc. taken over from Messrs.N. Venkatesh Shenoy & Co. of Cochin, and the pledged jewels.

Please see passage marked A at page 3 C.F. There are good grounds for holding that the Syndicate sold the goods in the course of trade or business within the meaning of section 2(h) of the Madras General Sales Tax Act, 1939 and that therefore the Syndicate is liable to sales tax on the sales of goods.

2. Sale of ~~pledged jewels for Rs. 4444-0-0~~ the silver bars, for Rs. 1124-10-0. The sale is said to have been effected on behalf of Messrs. Devakaran ~~Nanjee~~ Nanjee Banking Co.Ld, Bombay for a commission. As the principal on whose behalf the sale was effected is outside the Province of Madras the Syndicate cannot claim exemption even if it held a licence as a commission agent under section 8 of the Act ~~in respect of the sale of silver bars~~. The Syndicate can however claim exemption provided it had obtained a licence for dealing in bullion and specie under section 5 of the Act.

3. The file may be sent to Legal and Finance for remarks before circulation.

Legal

Legal Department

Regarding section 277F of the Companies Act, a banking company is a company which carries on, in addition to its principal business, one or more of the forms of business referred to in clauses (1) to (17) of that section. The transactions of the Syndicate in this case may be said to fall under clauses (2), (7) and (8) of the section and consequently, the sales effected by it cannot be regarded as

ASSISTANT SECRETARY 8-MAY 1944 LEGAL DEPT.

"casual sales" as contended by it. This Department may therefore agree with the view expressed by A.S., Revenue.

10/5/44 S

Legal U.O 3247-1 11/5/44

Fin (Exp-A)

This department also may agree with the view of A.S., Rev on p 2 above.

15.5.44

18.5.44

11.5.44

Rev

Rev. 20/5/44.

D/ A.S.

Please see the notes from p-1 above.

2. A draft order is enclosed for approval. May be circulated to A2

23.5.44 24.5.44 24.5.44 26/5/44

A2 A-2

26/5/44

Circ. 26/5/44.

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